State Environmental Policy Act

NON-PROJECT REVIEW FORM

DATE: November 5, 2003

COMPLETED BY: Gerry O'Keefe

PART I - FRAMEWORK

1) Background

a) Name of proposal, if any, and brief description.

The proposal is a water resources rule for the mainstem of the Columbia River that will define how the Department of Ecology will carry out its dual obligations to allocate water and preserve a healthy environment. The objective of the management program will be to meet the needs of a growing population and a healthy economy while also meeting the needs of fish and healthy watersheds. The rule is being developed through the Columbia River Initiative process.

b) Agency and contact name, address, telephone, fax, email

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c) Designated responsible official

Linda Hoffman, Interim Director

d) Describe the planning process schedule/timeline

The following table lists the major milestones in the process of developing a rule under the Columbia River Initiative.

MAJOR PROCESS MILESTONES	TARGET DATES
SEPA Scoping Notice comment period	November 13 to December 12, 2003
University of Washington Economics Study Completed	December 15, 2003
National Academy of Sciences Report Completed	March 15, 2004
Informal draft rule public review	April 19-May 14
File CR-102, Draft Rule for Formal Review	July 7
Mail/give notice for the Draft EIS	July 21
Formal Public Hearings	August 10 – 27
Comment period for proposed rule and Draft EIS ends	September 3
Issue Final EIS	October 19
Adoption, CR-103 filing	October 29
Effective date	December 2

e) Location - Describe the jurisdiction or area where the proposal is applicable. (Attach map(s) if appropriate)

The water resources rule will be applicable to the waters of the Columbia River located above the Bonneville Dam. The waters of related major tributaries may also be affected.

f) What is the legal authority for the proposal?

Chapters 90.03, 90.22, 90.44, 90.54, 43.21A, and 43.27A RCW

g) Identify any other future nonproject actions believed necessary to achieve the objectives of this action.

None.

2) Need and Objectives

a) Describe the need for the action. (Whenever possible this should identify the broad or fundamental problem or opportunity that is to be addressed, rather than a legislative or other directive.)

Water resources decision-making related to the mainstem of the Columbia River is increasingly controversial. A lack of scientific consensus has resulted in gridlock. A backlog of permit applications exists, but the policies needed to act on these applications are unsettled. Litigation has become a strategy of last resort for a variety of stakeholders. The

objective of the Columbia River Initiative and the management program it develops is to meet the needs of a growing population and a healthy economy while also meeting the needs of fish and healthy watersheds.

b) Describe the objective(s) of the proposal, including any secondary objectives which may be used to shape or choose among alternatives.

The objectives of the Columbia River Initiative are to establish the scientific and economic underpinnings supporting a new state water management program for the mainstem of the Columbia River, and to implement the new program by adopting a rule governing any new water right decision-making by the Department of Ecology.

c) Identify any assumptions or constraints, including legal mandates, which limit the approach or strategy to be taken in pursuing the objective(s).

- The Department of Ecology will work to adopt the rule prior to the end of calendar year 2004.
- The process used to adopt the rule will comply with the requirements of the Administrative Procedures Act.
- The scientific and economic studies funded as a part of the Columbia River Initiative are scheduled and under way.

d) If there is no legislative or other mandate that requires a particular approach, describe what approaches could reasonably achieve the objective(s).

The current management system for the Columbia River was adopted into a rule. It requires case by case evaluation of water right applications, and was intended from inception to be an interim approach. In order to modify the existing management system and establish a long term decision-making framework, a new rule must be adopted.

3) Environmental Overview

Describe in broad terms how achieving the objective(s) would direct or encourage physical changes to the environment. Include the type and degree of likely changes such as the likely changes in development and/or infrastructure, or changes to how an area will be managed.

The adoption of a new water management program for the Columbia River may or may not result in physical changes to the environment.

Should the findings of the National Academy of Sciences suggest a significant risk associated with allocation of new water for off-stream uses, then it is unlikely that the management rule that is adopted would result in substantial physical changes to the environment. It is more likely that the state would seek solely to maximize the efficiency and effectiveness of currently allocated water resources. Actions may include enhanced water conservation and support for an enhanced water market for mainstem resources.

If the science study determines the risk associated with allocation of new water resources

from the mainstem of the river can be effectively managed or mitigated, then it is more likely that the rule adoption to implement this approach will result in substantial physical changes to the environment. These changes would most likely include water withdrawals for out-of-stream uses resulting in additional land use development. Changes may also result from mitigation efforts employed to offset the effects of those out-of-stream uses.

4) Regulatory Framework

a) Describe the existing regulatory/planning framework as it may influence or direct the proposal.

The Columbia River is a very large river system that is, in large part, managed by the United States Bureau of Reclamation, the Bonneville Power Administration, and the United States Army Corps of Engineers for navigation, power generation, and irrigation purposes for the benefit of citizens throughout the Pacific Northwest. The regulatory framework is very complex and involves agreements between the United States and Canada, management of water and fisheries resources by the states of Idaho, Montana, Wyoming, Idaho, Washington, and Oregon; the United States Fish and Wildlife Service; the National Oceanic and Atmospheric Administration-Fisheries; and several Native American Tribes. A series of Biological Opinions regarding the operations of the Federal Columbia River Hydropower System have, in the past decade, significantly altered the operation of federal reservoirs, power generating facilities, and irrigation systems. The Northwest Power and Conservation Council and the Bonneville Power Administration (BPA) are responsible for planning and implementing a fish and wildlife program funded by revenues from the sale of electricity by BPA.

In that context, the State of Washington is charged with the responsibility to manage water use in the public interest.

b) Identify any potential impacts from the proposal that have been previously designated as acceptable under the Growth Management Act (GMA), chapter 36.70A RCW.

Some cities have addressed water use and associated impacts via SEPA documents that were prepared in support of GMA plans and ordinances.

5) Related Documentation

a) Briefly describe any existing regulation, policy or plan that is expected to be replaced or amended as a result of the proposal. (Adequate descriptions in section 4.a may be referenced here, rather than repeated.)

Two existing water resources rules related to the Columbia River may be repealed or amended. These include the existing instream flow/consultation rule for the mainstem (chapter 173-563 WAC), and the existing rule related to the John Day/McNary reservation (chapter 173-531A WAC).

b) List any environmental documents (SEPA or NEPA) that have been prepared for items listed in 4.a. or that provide analysis relevant to this proposal.

Proposed Water Resources Management Program – John Day / McNary Pools of the Columbia River (June 1978), Department of Ecology, available at Ecology's Headquarters Offices, Lacey, Washington.

Columbia River Instream Resources Protection Program Environmental Impact Statement (June 1980), Department of Ecology, available at Ecology's Headquarters Offices, Lacey, Washington.

Fish and Wildlife Implementation Plan – Draft Environmental Impact Statement, Bonneville Power Administration, available at: http://www.efw.bpa.gov/portal/Organizations/Government/Federal/Dept_of_Energy/BPA/Environment/NEPA/Fish_And_Wildlife/executivesummary.pdf

Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement, US Army Corps of Engineers, available at: http://www.nww.usace.army.mil/lsr/final_fseis/study_kit/studypage.htm

c) List other relevant environmental documents/studies/models which have been identified as necessary to support decision making for this proposal.

National Academy of Sciences, Study of Columbia River Water Resources Management: Instream Flows and Salmon Survival. Report will be issued in March, 2004 and posted on the internet at: http://www.ecy.wa.gov/programs/wr/cri/crihome.html

University of Washington review of economics of water use in the Columbia Basin in Washington State. A final report will be issued in December, 2003 and posted on the internet at: http://www.ecy.wa.gov/programs/wr/cri/crihome.html

Water Use Efficiency Best Management Practices proposal developed by the Department of Ecology, the Columbia Snake River Irrigators Association, and others. The proposal can be viewed on the internet at: http://www.ecy.wa.gov/programs/wr/cri/crihome.html

The U.S. Environmental Protection Agency's TMDL model for the Columbia River has been used to assess the potential impact water withdrawals may have upon water temperature in the mainstem of the Columbia River.

6) Public Involvement (Optional)

a) Identify agencies with jurisdiction or expertise, affected tribes, and other known stakeholder groups whose input is likely to be specifically solicited in the development of this proposal.

American Rivers
Bonneville Power Administration
Center for Environmental Law and Policy
Chelan County Public Utility District
City of Kennewick
City of Pasco
City of Richland
Columbia Snake River Irrigators Association
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of the Warm Springs Reservation
Counties bordering the Columbia River
Department of Health
Douglas County Public Utility District
Grant County Public Utility District
Irrigation Districts bordering the Columbia River
National Wildlife Federation
Northwest Sportfishing Industry Association
Port of Pasco
Port of Kennewick
U.S. Army Corps of Engineers
U.S. Bureau of Reclamation
Washington Association of Business
Washington Department of Fish and Wildlife
Washington Environmental Council
Washington Public Ports Association
Washington State Farm Bureau
Yakama Nation

b) Briefly describe the processes used or expected to be used for soliciting input from those listed.

A variety of processes will be used to solicit input from the public. The primary method of gathering feedback to scope the Environmental Impact Statement will be an open comment period during which interested parties may submit comments. As a part of the Columbia River Initiative, representatives of the Department of Ecology have met with interested parties, have published a web page, and have established ad hoc committees to address particular issues. These activities will continue.

Once a Draft Environment Impact Statement and draft rule language have been prepared the Department of Ecology will employ additional public involvement tools. These will include consultations with affected tribes and formal public hearings, in addition to the public involvement efforts that are currently being used.

PART II – Range of Potential Management Programs

7) Range of Alternatives under Consideration

Background

This section is based upon a set of management scenarios that were provided to the National Academy of Sciences as a part of the scientific review that is underway. The draft management scenarios are potential water resources management strategies for the Columbia River mainstem. They are used in this context to describe the full range of possible proposals that may be developed and to serve as the alternatives under consideration for the rule and the Draft Environmental Impact Statement (DEIS). Specific draft rule language and a DEIS are waiting for input from the National Academy of Sciences, but the Department of Ecology expects that whatever is eventually proposed will fall within this range of possibilities.

The scope of work for the National Research Council's committee includes a requirement to review and comment upon a set of management scenarios to be provided by Ecology. In the form described herein, the alternative scenarios represent early thinking about a range of possible outcomes relating risk to salmon and water use. They should not be interpreted as a set of final proposals, nor as a package intended to constrain the potential outcomes of the scientific review or the department's own rule-making process. The management program that is eventually proposed by Ecology as a formal rule will have been shaped by feedback from the scientific review and the public and would likely include elements that have yet to be suggested by interested parties.

Once the science review is complete, a management program will be developed for further refinement and will be drafted as a proposed rule by Ecology. Selection of a particular management alternative or a blended approach will be based upon risk, impact, and economic analyses. A draft Environmental Impact Statement will be prepared based upon the rule language that is proposed. Both formal and informal public review and comment will be included as elements of the rule-making process. Final adoption of the rule will take

place following the publication of the National Research Council's report, and the public comment period.

Five Management Scenarios

With the exception of the No Action Scenario, each scenario describes an amount of water to be allocated for out-of-stream use, and any mitigation that might be undertaken in conjunction with the increased use of water.

Scenario 1: Water Allocation Linked to Current Salmon Efforts

For Scenario 1, it is assumed that the state and region will continue to make current or increased investments in existing salmon recovery-related environmental activities, but that these investments are relatively unrelated to the new Washington water resources management program that would allocate up to 1 million acre feet of new water over a 20-year period for use in Washington, and recognize an additional 1 million acre feet for Oregon, Idaho, and Montana.

As embodied in the Northwest Power Planning Council's Fish and Wildlife Plan and Washington's Statewide Strategy to Recover Salmon, existing salmon-related environmental activities include direct investments in salmon recovery projects made by the Salmon Recovery Funding Board and local salmon recovery groups, state and local investments in watershed planning, ongoing efforts to establish instream flows in tributaries to the Columbia River, the state program to purchase water rights to support instream flows, state and federal funding of irrigation efficiency.

In Scenario 1, it is assumed that water resources could be made available for use between the Canadian Border and the Bonneville Dam. New permits would be issued by the State of Washington during a 20-year window, not to exceed 1 million acre feet in total. Within the total amount of water allocated by Scenario 1 approximately 220,000 acre-feet would be made available to meet demand within the Columbia Basin Project. In addition to the 1 million acre feet to be allocated to Washington water users by Scenario 1, 427,000 acre-feet, representing flow and temperature management actions taken in the Snake River, would be legally recognized through the Washington State reaches of the Snake and Columbia Rivers, and 600,000 acre feet would be recognized as necessary to meet the water resources needs of the state of Oregon. Commitments of water resources in this scenario total 2 million acre feet, of which 1.6 million could be developed for out-of-stream use over the next 20 years.

Permits that are currently subject to interruption when stream flows reach a predetermined level could be, at the owner's option, converted to uninterruptible status. These water rights could be converted to uninterruptible status by demonstrating that current water use conforms to state-of-the-art water use efficiency practices. Likewise, all new water rights issued by the state would require state-of-the-art efficiency in proposed uses and would also be metered.

Periodic assessment of the state's water resources management program would be integral and ongoing. Scientific information would be used to adapt the program as necessary to accommodate changes in knowledge over time. Formal re-evaluations of the program would take place at year 10 and year 20.

In addition, the state would seek partners to create a functioning water market or "water bank" for the mainstem of the Columbia River to facilitate a more efficient allocation of existing water resources in the Basin.

Scenario 2: Incremental Mitigation Linked to New and Modified Permits

Scenario 2 proposes a new level of contribution to salmon health and recovery to secure sufficient additional benefits for fish and to offset the risk created by additional water withdrawals from the river. Revenue to support the additional level of effort would be generated by a $10 per acre foot per year usage charge on new permits and on existing rights that are converted from an interruptible to an uninterruptible status. The elements of the scenario would be in addition to the ongoing state and regional actions, assessment, and water bank described in Scenario 1.

New permits would be issued during a 20 year window, not to exceed 700,000 acre feet in total. The state would issue an additional 300,000 acre feet (a total of 1 million acre feet) from the mainstem once existing users demonstrate that conservation investments are in place for a majority of the water use on the mainstem. Applicants for new permits or conversion of existing permits to uninterruptible status would also be required to demonstrate compliance with state-of-the-art efficiency standards.

Revenue generated would provide funds to acquire mitigation water in low water years and to make habitat improvements in the mainstem and tributaries. In addition to existing salmon-related environmental activities, the development of storage projects could be explored using these resources. Fisheries managers would be asked to prioritize the use of these resources, and would consider implementing a low water year strategy.

Scenario 3: Enhanced Level of Mitigation

This alternative would incorporate the current salmon recovery-related environmental activities and other proposed actions described in Scenarios 1 and 2. However, this scenario proposes a more robust contribution to salmon health and survival to secure additional benefits to fish and to offset the risks caused by additional water withdrawals from the river. Revenue to support the additional level of effort would be generated by a $20 per acre foot per year usage charge on new permits and on existing rights that are converted from an interruptible to an uninterruptible status. Revenue generated by the usage charge would be used to benefit salmon recovery projects. Consistent with Scenario 2, this alternative would create a 20-year window to issue new water use permits, in an amount not to exceed 1 million acre feet in total.

To supplement actions supported by the usage charge on new permits and on existing rights that are converted to an uninterruptible status, the state would provide financial support to install new conservation measures. The state would also actively explore other means to provide additional water for offstream and instream uses, e.g. storage developments. Fisheries managers would be asked to prioritize the use of these resources, and would consider implementing a low water year strategy.

Scenario 4: In-Place, In-Kind, and In-Time Mitigation

Scenario 4 proposes to offset the risk to salmonid survival that would result from additional water withdrawals from the Columbia River directly in proportion to consumption. No new water rights would be permitted without being offset by direct mitigation in the mainstem of the Columbia River.

Under Scenario 4, all new water rights could be required to offset water use through water right changes and transfers, conservation, and/or utilizing newly developed storage capacity. The state would pursue conservation savings from existing rights and would also actively pursue storage projects that could provide the capacity to support new water resources for out of stream appropriation.

Existing water rights could be converted to an uninterruptible status by conforming to state-of-the-art water use efficiency standards and by paying a $30 per acre foot per year usage charge. Revenue generated would provide funds to acquire mitigation water in low water years and to make habitat improvements in the mainstem and tributaries.

Scenario 5: No Action Scenario

Scenario 5 reflects a decision that the existing rules governing the water resources of the Columbia River would remain in place unaltered. The Department of Ecology would consult with fish managers (Washington Department of Fish and Wildlife, Tribes, National Oceanic and Atmospheric Administration – Fisheries Division) prior to allocating new water rights. Under this scenario whether or not mitigation is required and the type and quantity of that mitigation is a decision that is made on each permit on a case by case base as a result of the consultation.

Features of the Management Alternatives

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Amount of new water allocated by Washington State	1 million acre feet	700,000 acre feet, plus 300,000 acre feet if conservation goal attained	700,000 acre feet, plus 300,000 acre feet if conservation goal attained	None	Unknown
Current salmon recovery efforts assumed to continue	Yes	Yes	Yes	Yes	n/a
Location of withdrawals	Canadian Border to the Bonneville Dam	Canadian Border to the Bonneville Dam	Canadian Border to the Bonneville Dam	Canadian Border to the Bonneville Dam	n/a
Conversion of interruptible water rights to uninterruptible status	Yes	Yes	Yes	Yes	No
Best Management Practices for Water Conservation	New and converted rights	New and converted rights	New and converted rights	Converted rights	Would depend on the outcome of case by case consultation with fisheries managers
Periodic Assessment of Outcomes	Yes	Yes	Yes	Yes	No
Water Bank Created	Yes	Yes	Yes	Yes	Unknown
Financial Contribution to Offset Risk to Salmon	None	$10 per acre foot for new and converted rights	$20 per acre foot for new and converted rights	$30 per acre foot for converted rights	Would depend on the outcome of case by case consultation with fisheries managers
Explore Storage Projects	No	Yes	Yes	Yes	Unknown